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EXAMINER	
SMITH, PAULINHO E	

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte NATIVADADE ALBERT LOBO

Appeal 2016-004095
Application 11/991,861
Technology Center 2100

Before MAHSHID D. SAADAT, CARL L. SILVERMAN, and ALEX S. YAP, *Administrative Patent Judges*.

YAP, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant[1] appeals under 35 U.S.C. § 134(a) from the final rejection of claims 1, 3–8, 11–16, 18–24, and 26–31,[2] which are all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] According to Appellant, the real party in interest is Core Wireless Licensing S.A.R.L. (App. Br. 3.)

[2] Claims 2, 9, 10, 17, and 25 were cancelled previously. (*See id.* at 10–14.)

STATEMENT OF THE CASE

Introduction

Appellant's disclosed invention relates "to detecting presence/absence of an information signal." (Mar. 12, 2008 Specification ("Spec.") p. 1, ll. 7–8.) Claim 1 is illustrative, and is reproduced below:

> 1. A method for detecting a presence of an information signal comprising:
>
> receiving inputs, wherein the inputs are power values;
>
> updating a latest mean of the inputs based on at least the received inputs;
>
> determining an expected variance in a mean of the inputs based on an assumed statistical distribution of the power values, the expected variance being based on at least the latest mean of the inputs;
>
> determining a range of probable values for the mean of the inputs based on the mean of the inputs and the determined expected variance in the mean of the inputs; and
>
> testing, using the determined expected variance of the received inputs, a first hypothesis that the inputs include an information signal to detect a presence of the information signal by determining whether the range of probable values for the mean of the inputs lies above a first threshold.

Prior Art and Rejections on Appeal

The following table lists the prior art relied upon by the Examiner as evidence in rejecting the claims on appeal:

Wilson et al. ("Wilson")	US 5,323,337	June 21, 1994
Dubuc et al. ("Dubuc")	US 7,428,270 B1	Sept. 23, 2008

Barkat et al., *Signal Detection and Estimation*, Artech House Inc., 2nd ed. pp. 101–115 (2005) ("Barkat").

Claims 1, 22, 23, 26, and 27 stand rejected under 35 U.S.C. §112, second paragraph, as failing to comply with the definiteness requirement. (*See* Final Office Action (mailed Dec. 19, 2014) ("Final Act.") 2–3.)

Claims 1, 3–8, 11–16, 18–20, 22–24, and 26–31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wilson in view of Dubuc. (*See* Final Act. 4–23.)

Claim 21 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Wilson, in view of Dubuc, and further in view of Barkat. (*See* Final Act. 23–24.)

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellant's arguments that the Examiner has erred. We disagree with Appellant's conclusions.

Indefiniteness Rejection

The Examiner finds that claims 1, 22, 23, 26, and 27 fail to comply with the definiteness requirement of 35 U.S.C. §112, second paragraph because:

> The claims state that "determining an expected variance for the mean of the inputs", but fail to define what expected variance, what equation or calculation is used to determine expected variance, and how expected variance is different from variance. It could mean expected variance is equal to, a multiple of, divided by some number, or any possible math operations performed on actual variance. In the interest of compact prosecution and using the broadest reasonable interpretation, examiner interprets the limitation to mean that expected variance is the same as or equal to the variance.

(Final Act. 2; *see id.* at 3 (stating other reasons why the claims are indefinite); *see also* Ans. 4–5 (maintaining the rejection under 35 U.S.C. §112, second paragraph.)

Appellant does not address these specific findings in the briefs. Accordingly, we sustain the Examiner's rejection of claims 1, 22, 23, 26, and 27 as failing to comply with the definiteness requirement under 35 U.S.C. § 112, second paragraph. Although the Examiner has not listed dependent claims 3–8, 11–16, 18–20, 24, and 28–31, it is clear that the Examiner also intended to reject these claims under 35 U.S.C. §112, second paragraph, because these claims depend from either independent claim 1 or independent claim 27. Therefore, we also sustain the 35 U.S.C. §112, second paragraph, rejection of claims 3–8, 11–16, 18–20, 24, and 28–31.

Prior Art Rejections

The Examiner finds claims 1, 3–8, 11–16, 18–20, 22–24, and 26–31 unpatentable over Wilson in view of Dubuc (*see* Final Act. 4–23) and claim 21 unpatentable over Wilson, in view of Dubuc, and further in view of Barkat (*see* Final Act. 23–24). Based on the above discussion, however, the prior art rejections of claims 1, 3–8, 11–16, 18–24, and 26–31 under 35 U.S.C. § 103(a). In view of the indefiniteness of claims 1, 3–8, 11–16, 18–24, and 26–31, which are all the claims on appeal as discussed *supra*, we do not review the Examiner's § 103 rejections. Such a review would require us to engage in speculation and conjecture to determine the scope of the claimed invention. This we decline to do. *See In re Steele*, 305 F.2d 859, 862 (CCPA 1962) (A prior art rejection cannot be sustained if the hypothetical person of ordinary skill in the art would have to make speculative assumptions concerning the meaning of claim language.); *see*

also In re Wilson, 424 F.2d 1382, 1385 (CCPA 1970) ("If no reasonably definite meaning can be ascribed to certain terms in the claim, the subject matter does not become obvious-the claim becomes indefinite."). Accordingly, we do not sustain the Examiner's rejections of claims 1, 3–8, 11–16, 18–24, and 26–31 under 35 U.S.C. § 103(a).

DECISION

We affirm the decision of the Examiner to reject claims 1, 3–8, 11–16, 18–24, and 26–31 for failing to comply with the definiteness requirement of 35 U.S.C. § 112. We reverse the decision of the Examiner to reject claims 1, 3–8, 11–16, 18–24, and 26–31 under 35 U.S.C. § 103.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED